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GOVERNMENT OF INDIA



दिल्ली राजपत्र

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भाग II खण्ड 1 PART II—Sec. 1

न्यायिक और मजिस्ट्रीरी मामलों पर अधिसूचनाएं और आदेश, उच्च न्यायालय की अधिसूचनाएं और भारत के निर्वाचन आयोग की विधिक अधिसूचनाओं तथा अन्य निर्वाचन अधिसूचनाओं का पुनः प्रकाशन

Notifications and Orders on Judicial and Magisterial matters; reproduction of High Court Notifications and Statutory Notifications of the Election Commission of India and other Election Notifications

राष्ट्रीय राजधानी राज्य क्षेत्र, दिल्ली सरकार
GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI

कार्यालय मुख्य निर्वाचन अधिकारी, दिल्ली
अधिसूचना

दिल्ली, 11 अक्टूबर, 2023

सं.—मु.चु.अ./चु.सं./102(19)/2023/22939.—निम्नलिखित को सर्वसाधारण की जानकारी के लिए प्रकाशित किया जाता है।—

भारत निर्वाचन आयोग सचिवालय

अधिसूचना

नई दिल्ली, 9 अक्टूबर, 2023

सं. 82/ECI/DEL/2023/NS-II/PC-01.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग वर्ष 2019 की निर्वाचन याचिका सं. 02 में माननीय उच्च न्यायालय, दिल्ली के दिनांक 01 मई, 2023 के निर्णय को एतद्वारा प्रकाशित करता है।

आदेश से,

अजय कुमार, प्रधान सचिव

आदेश से,

राजेश कुमार, विशेष मुख्य निर्वाचन अधिकारी, दिल्ली

OFFICE OF THE CHIEF ELECTORAL OFFICER, DELHI

NOTIFICATION

Delhi, the 11th October, 2023

No. CEO/COE/102(19)/2023/22939.—The following is published for general information.—

SECRETARIAT OF THE ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 9th October, 2023

No.82/ECI/DEL/2023/NS-II/PC-01.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgement dated 01st May, 2023 of the Hon'ble High Court of Delhi in the Election petition no. 02 of 2019.

By Order,

AJOY KUMAR, Principal Secy.

By Order,

RAJESH KUMAR, Special Chief Electoral Officer, Delhi

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **EL.PET. 2/2019 & I.A. 10434/2019, I.A. 2860/2020**

ANIL KUMAR Petitioner

Through:

.....*Petitioner in person.*

versus

CHIEF ELECTION COMMISSIONER & ORS.

.....*Respondents*

Through: Mr. Sidhant Kumar, Mr. Gurpreet Singh Bagga, Ms. Muskaan Gopal and Ms. Vidhi, Advocates for R-1.

Ms. Anjana Gosain, Ms. Nippun Sharma and Ms. Hetika Vadhera, Advocates with Ms. Rita Maurya, Senior Assistant in person for R-2 & 3.

Mr. Nikhil Goel and Mr. Kartik Kaushal, Advocates for R-4.

CORAM:**HON'BLE MR. JUSTICE SANJEEV NARULA****ORDER**

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01.05.2023

1. Anil Kumar, the Petitioner, has filed this election petition under Section 80 and 81 read with Section 100(1)(d) of the Representation of the People Act, 1951 [hereinafter '**the Act**'] challenging the result of 17th Lok Sabha Elections held on 12th May, 2019 for PC-01 Chandni Chowk, Delhi constituency.

2. Background facts averred in the present petition are as follows:

2.1. Election Commission of India [Respondent No. 1] issued a notification under Section 30 of the Act, on 10th March, 2019 to announce the Lok Sabha Elections in Delhi. The Petitioner filled his nomination form on 23rd April, 2019 from Rashtriya Rashtrawadi Party [hereinafter '**RRP**'] with the Returning Officer [Respondent No. 2] which was accepted on 25th April, 2019.

2.2. On 26th April, 2019, Petitioner sent a communication to Respondent No. 1, requesting that no symbol be granted to him for the said elections. Subsequently, on 03rd May, 2019, Petitioner requested Respondent No. 1 to ensure that election campaigning is stopped 48 hours before the conclusion of poll, in terms of Section 126 of the Act. Follow-up reminder was sent on 06th May, 2019 and again, on 11th May, 2019, when Petitioner noticed that political parties were continuing the campaigning through newspapers and hoardings.

2.3. Respondent No. 1 conducted the said elections across different constituencies in Delhi on 12th May, 2019. On the same day, Petitioner sent another communication to Respondent No. 1 complaining that election campaigning was still being continued.

2.4. Petitioner learnt on the election day that an election symbol had been affixed on the EVM next to his name despite his specific request to the contrary, and accordingly sent a communication on 20th May, 2019 to Respondent No. 1 to lodge his grievance.

2.5. Results of the said elections were announced on 23rd May, 2019, whereby Dr. Harsh Vardhan [Respondent No. 4] was elected and the Petitioner stood at the 5th position.

3. In the above background, Petitioner has filed the present petition seeking following prayers: -

- a. Set aside the Lok Sabha election PC- 01 Chandni Chowk in all which was held on 12.05.2019 and declare the same as void;*
- b. Issue any other or further order or direction commanding the respondent no.2 to conduct a fresh bye-election on the expenses of responsible political party / parties/ candidate / candidates for the sake of democratic set up as well as public fund;*
- c. Impose punishment as per section 126(2) of The Representation of People Act1951 against the defaulting parties to the election;”*

4. Respondent No. 4, the returned candidate in the said elections, has filed I.A. 2860/2020 under Order VII Rule 11 of the Code of Civil Procedure, 1908 [hereinafter '**CPC, 1908**'] read with Section 83(1) of the Act, seeking rejection of the present petition, while Respondents No. 1 and 2 as well as Chief Electoral Officer of Delhi [Respondent No. 3] have filed I.A. 10434/2019 seeking deletion from the array of parties under Order I Rule 10 of CPC, 1908 read with Section 82 of the Act.

5. The Court has heard Mr. Anil Kumar, Petitioner, who appears in person, as well as counsel for Respondents.

6. Petitioner's grievance arises primarily on two grounds. Firstly, he is aggrieved with the allocation of election symbol. His contention is that his political party (RRP), had decided its candidates would not opt for an election symbol and let voters choose the candidates on the basis their work. Petitioner had been an active worker in the constituency and was well-known for his social work. Accordingly, against the column of the election symbol in his nomination form, Petitioner mentioned "*my photo*" / "*meri photo*" and "*N/A*". Thereafter, Petitioner canvassed for his candidature by representing to voters that they would have to vote for him by his name and photo. Contrary to Petitioner's request, Respondent No. 2, the Returning Officer, imposed an election symbol which was put on the EVM machine against the Petitioner's name, against his wishes and without his knowledge and thus, forced Petitioner to adopt a symbol which has no resemblance with his work, his personality or his party. This, according to him, has been the cause of his defeat in the election.

7. Secondly, he contends that elections have been conducted in gross violation of Section 126 of the Act, which prohibits canvassing for 48 hours ending with the hour fixed for the conclusion of polling of

votes. He states that the said provision exhibits the intention of the legislature to provide a level playing field to all contesting candidates. In compliance of the same, Petitioner stopped canvassing on 10th May, 2019 by 5PM, whereas various other parties continued to engage in the same, till the date of polling, i.e., 12th May, 2019.

8. The Court has considered the aforesaid contentions. On the issue of allotment of the election symbol, counsel for Respondent No. 4 has drawn the attention of this Court to Rule 5 of the Conduct of Election Rules 1961, which reads as follows:

"5. Symbols for elections in parliamentary and assembly constituencies.—

(1) The Election Commission shall, by notification in the Gazette of India, and in the Official Gazette of each State, specify the symbols that may be chosen by candidates at elections in parliamentary or assembly constituencies and the restrictions to which their choice shall be subject.

(2) [Subject to any general or special direction issued by the Election Commission either under sub-rule (4) or sub-rule (5) of rule 10, where at any such election], more nomination papers than one are delivered by or on behalf of a candidate, the declaration as to symbols made in the nomination paper first delivered, and no other declaration as to symbols, shall be taken into consideration under rule 10 even if that nomination paper has been rejected."

9. Further, Rule 4 of the Election Symbols (Reservation and Allotment) Order, 1968 reads as under:

"4. Allotment of symbols – In every contested election a symbol shall be allotted to a contesting candidate in accordance with the provisions of this

Order and different symbols shall be allotted to different contesting candidates at an election in the same constituency."

10. On a conjoint reading of the aforesaid provisions, it is clear that in every contested election, a symbol shall be allotted to contesting candidate. Thus, in the opinion of the Court, choosing/ allotment of an election symbol was mandatory and prescribed by law. Petitioner could not have opted out. Petitioner is unable to demonstrate any contravention of the Act or rules thereunder, to support his contention. Thus, just because an election symbol was allotted to the Petitioner contrary to his request, the same cannot be a ground to declare the said election void.

11. As regards the ground of violation of Section 126 of the Act, Petitioner has annexed communications/ representations to Respondent No. 1, wherein Petitioner requested that political parties be not allowed to advertise election matter in violation of Section 126 of the Act. There is no clarity as to the stand/ action taken thereon by Respondent No. 1. Nonetheless, the Court has perused the communication, which contains copies of newspaper clippings and photos of hoardings with advertisements by various political parties. In this regard, Section 126 of the Act is reproduced as under:-

"[126. Prohibition of public meetings during period of forty—eight hours ending with hour fixed for conclusion of poll.—

(1) No person shall—

(a) convene, hold, attend, join or address any public meeting or procession in connection with an election; or

(b) display to the public any election matter by means of cinematograph, television or other similar apparatus; or

(c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto,

in any polling area during the period of forty-eight hours ending with the fixed for the conclusion of the poll for any election in the polling area.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(3) In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election.]"

[Emphasis Supplied]

12. At this stage, it is pertinent to note that for an election to be declared void in terms of the Act, the grounds contained under Section 100(1) of the Act must be demonstrated. Present petition invokes the ground under Section 100(1)(d) of the Act, relevant portion whereof is reproduced as under: -

"100. Grounds for declaring election to be void.— (1) Subject to the provisions of sub-section (2) if the High court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act [or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate [by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

[the High Court] shall declare the election of the returned candidate to be void.]

..."

[Emphasis Supplied]

13. In the pleadings or submissions, Petitioner has not specifically invoked any of the grounds specified in Section 100(1)(d)(i) to (iii). In the opinion of the Court, Petitioner's contention of contravention of Section 126 of the Act would, at best, fall under Section 100(1)(d)(iv) of the Act. However, no contravention of the Constitution, or the Act or rules or orders under this Act, has been made out by the Petitioner. Further, no submission has been made or evidence brought forth which would demonstrate that the election result was materially affected by any such contravention.

14. As per Section 83(1)(a) of the Act, an election petition must contain "material facts". The facts averred in the pleadings do not spell out how the elections were materially affected, and thus, fall short of constituting a complete cause of action under Section 100(1)(d)(iv). The present petition does not comply with the mandatory requirement to furnish material facts disclosing the cause of action. Thus, no case is made out to entertain or grant the prayers sought in the petition.

15. Considering the above, I.A. 2860/2020 is allowed and the Petition is dismissed, along with other pending applications, if any.

16. At this stage, the Court must also note that Respondent No. 1, 2 and 3 are not necessary parties to the present petition in terms of the Act, as also the decisions of the Supreme Court¹ and this Court². In view of the same, I.A. 10434/2019 is allowed and Respondents No. 1 to 3 are deleted from the array of parties.

SANJEEV NARULA, J

MAY 1, 2023

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[Corrected and released on 8th May, 2023]

¹ B. Sundara Rami Reddy v. Election Commission of India 1991 Supp(2) SCC 624; Jyoti Basu v. DebiGhosal & Ors. 1982 1 SCC 691.

² Sanjay Gupta & Anr. v. Election Commission of India & Ors. 2019 SCC OnLine Del 9787; PratapChandra v. Mr. Manish Sisodia & Ors. order dated 24th March, 2021 in EL. PET. 1/2020.